

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
GEPS 3 (MC2010-28)
Negotiated Service Agreements

Docket No. CP2017-266

ORDER DENYING MOTION FOR TEMPORARY RELIEF

(Issued August 30, 2018)

The negotiated service agreement approved in this proceeding (Existing Agreement) is set to expire August 31, 2018.¹ On August 29, 2018, the Postal Service filed a motion for temporary relief seeking to extend the expiration date of the Existing Agreement.²

The Postal Service states that it is in the process of negotiating with the customer a possible successor to the Existing Agreement. Motion at 1. On August 28, 2018, the Postal Service sent a modification to the customer that would extend the Existing

¹ Order Approving Additional GEPS 3 Negotiated Service Agreement, August 24, 2017, at 5 (Order No. 4065).

² Motion of the United States Postal Service for Temporary Relief Concerning Global Expedited Package Services 3 Negotiated Service Agreement, August 29, 2018 (Motion).

Agreement until October 31, 2018. See *id.*, n.2. The Postal Service states that it received the signed modification on August 29, 2018, and will file that modification in this docket soon. *Id.* at 1. To maintain continuity of pricing, the Postal Service requests that the Commission continue to list the Existing Agreement in the Mail Classification Schedule through October 31, 2018. *Id.* The Commission requires motions for temporary relief to be filed at least one week prior to the contract's expiration date absent "compelling circumstances".³ The Postal Service acknowledges that its motion is untimely. Motion at 1 n.2.

The Commission has repeatedly urged the Postal Service to use contract extensions only in limited circumstances and not as a standard practice.⁴ The imminent filing of a modification usually suggests a good faith effort on the part of the Postal Service to adhere to the Commission's guidance.⁵ However, that suggestion of good faith is undermined when the Postal Service does not send the modification to the customer until well after the deadline for timely filing that modification with the Commission. See *id.* In this case, the Postal sent the modification to the customer only three days before the contract would expire. Motion at 1 n.2.

The Commission has also previously stated that failure to describe with particularity the circumstances requiring an extension impedes the Commission's ability to determine whether those circumstances justify the requested extension.⁶ The Postal Service states: "because of a variety of factors, a decision was only recently made to

³ See Docket No. CP2009-38, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2 (Order No. 1523).

⁴ See, e.g., Docket No. CP2012-38, Order Granting Second Motion for Temporary Relief, August 26, 2015, at 2 (Order No. 2685); Docket No. CP2013-83, Order Granting Third Motion for Temporary Relief, December 14, 2016, at 2 (Order No. 3665); Docket No. CP2014-57 Order Granting Motion for Temporary Relief, July 13, 2017, at 2 (Order No. 4001).

⁵ See Docket No. CP2017-146, Order Granting Motion for Temporary Relief, April 30, 2018, at 2 (Order No. 4596).

⁶ Order No. 4001 at 2. Order No. 4001 addressed a timely-filed motion for temporary relief. See *id.* The untimely filing in this case requires the Postal Service to meet the higher burden of demonstrating "compelling circumstances". See Order No. 1523 at 2.

renew this agreement.” Motion at 1 n.2. A bare reference to “a variety of factors” falls short of describing with particularity the circumstances justifying the requested extension.⁷

Furthermore, the Commission has reiterated that the dates on which contracts are scheduled to expire are known. See, e.g., Order No. 1523 at 2. A failure to make a timely decision on renewal in advance of a known expiration date is not, by itself, an extenuating circumstance of the type warranting temporary relief,⁸ let alone a “compelling circumstance” warranting a grant of temporary relief in response to an untimely motion. See Order No. 1523 at 2. Although it is possible that compelling factors prevented a timely decision, the Postal Service’s failure to state those factors with particularity prevents the Commission from relying upon them to grant the requested relief.

The Commission has cautioned the Postal Service that: “[i]n considering any future requests for an extension from the Postal Service, the Commission will closely evaluate the Postal Service’s compliance with Commission regulations and prior Commission guidance to ensure that such requests are appropriately considered.” Order No. 4001 at 2. Based on the Postal Service’s disregard of prior Commission guidance and failure to identify any extenuating circumstances warranting temporary relief, the Motion is denied.

⁷ See Order No. 4001 at 2 (discussing a bare reference to “extenuating circumstances”).

⁸ See Docket Nos. CP2008-8, CP2008-9, CP2008-10, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008, at 10 (“the Commission stands ready to act quickly on requests for temporary relief based on extenuating circumstances”) (Order No. 85).

It is ordered:

The Motion of the United States Postal Service for Temporary Relief Concerning Global Expedited Package Services 3 Negotiated Service Agreement, filed August 29, 2018, is denied.

By the Commission.

Stacy L. Ruble
Secretary